



Governing Body

340th Session, Geneva, October–November 2020

Institutional Section

INS

Date: 21 October 2020

Original: English

Eighteenth item on the agenda

Report of the Director-General

First Supplementary Report: Update on the status of ratification of the 1986 Instrument for the Amendment of the Constitution of the ILO and follow-up to paragraph 3 of the resolution on the ILO Centenary Declaration for the Future of Work

Purpose of the document

This document provides an update on the status of ratification of the 1986 Instrument for the Amendment of the Constitution of the ILO ("1986 Amendment") and action taken to promote its ratification since the last discussion by the Governing Body in October–November 2019. The Governing Body is invited to approve the mandate, composition and financing of the tripartite working group established by the Governing Body at its 337th Session (see draft decision at paragraph 19).

Relevant strategic objective: None.

Main relevant outcome: Enabling outcome B: Effective and efficient governance of the Organization.

Policy implications: None.

Legal implications: No immediate implications.

Financial implications: Depending on the decision of the Governing Body.

Follow-up action required: Depending on the decision of the Governing Body.

Author unit: Office of the Legal Adviser (JUR).

Related documents: GB.338/INS/15/1(Rev.1); GB.338/PV(Rev.4); GB.337/INS/PV; GB.337/INS/12/1(Rev.1); ILO Centenary Declaration for the Future of Work; resolution on the ILO Centenary Declaration for the Future of Work; GB.335/PV; GB.335/INS/14/3; GB.334/INS/PV; GB.334/INS/13/2; GB.332/INS/PV; GB.332/INS/12; GB.332/WP/GBC/1; GB.331/PV; GB.331/INS/17; GB.331/WP/GBC/1; GB.329/PV; GB.329/INS/18; GB.329/WP/GBC/1.

▶ Introduction

1. At its 337th Session (October–November 2019), the Governing Body continued reviewing the status of ratification of the 1986 Instrument for the Amendment of the Constitution of the ILO (the 1986 Amendment). The Governing Body requested the Director-General to continue promotional efforts for the ratification of the 1986 Amendment, to write to Member States that have not yet ratified it, and to report at future Governing Body sessions on the results obtained. The Governing Body also decided to establish “a tripartite working group to serve as a platform for focused dialogue and for developing proposals on the full, equal and democratic participation in the ILO’s tripartite governance in the spirit of the Centenary Declaration”, on the basis of proposals regarding the working group’s composition and mandate to be presented, following tripartite consultations, by the Director-General to the Governing Body at its 338th Session.¹ Since that session did not take place, this item was deferred to the current session of the Governing Body on the understanding that informal consultations would be held in the meantime to finalize proposals on such composition and terms of reference.²
2. Since the last Governing Body discussion on this matter in October–November 2019, the 14th African Regional Meeting held from 3 to 6 December 2019 in Abidjan, adopted a declaration which reaffirms that “ILO governance should be democratized as a matter of priority by ensuring a fair representation of all regions and establishing the principle of equality among member States”.³
3. This document provides an update on the promotional efforts for the entry into force of the 1986 Amendment and also addresses the composition and mandate of the tripartite working group.

▶ Status of ratification and promotional efforts

4. As at 27 September 2020, 113 ratifications of the 1986 Amendment had been registered, including two from Members of chief industrial importance (India and Italy). Since the last discussion by the Governing Body in October–November 2019, three new ratifications (by Albania, Djibouti and Portugal) have been registered. A further 12 ratifications, including at least three from Members of chief industrial importance (from among Brazil, China, France, Germany, Japan, the Russian Federation, the United Kingdom of Great Britain and Northern Ireland and the United States of America), are required for the 1986 Amendment to enter into force.
5. As requested by the Governing Body, the Director-General sent on 14 January 2020 a further letter to the Member States that have not yet ratified the 1986 Amendment inviting them to consider the call of the Centenary Conference for the ratification of the

¹ GB.337/INS/PV, para. 448; GB.337/INS/12/1(Rev.1), para. 13, as amended by the Governing Body.

² GB.338/PV(Rev.4), para. 8.

³ Abidjan Declaration – Advancing Social Justice: Shaping the Future of Work in Africa, adopted on 6 December 2019 by the 14th African Regional Meeting held in Abidjan, Côte d’Ivoire.

1986 Amendment, and, unless they had already done so, to provide comments and explanations on the reasons which have thus far prevented or delayed ratification. As at 27 September 2020, the Office had received four replies. Three Governments (Peru, Spain and Yemen) informed that national ratification procedures were under way while one Government (Bulgaria) considered that the reference to “the socialist States of Eastern Europe” in article 7(3)(b)(i) of the 1986 Amendment constituted an obstacle preventing ratification.

6. Since the last discussion by the Governing Body in October–November 2019, the Office has continued its promotional activities for the ratification of the 1986 Amendment. It displayed promotional materials during the 14th African Regional Meeting, and has continued to maintain the dedicated page on the ILO website.⁴ The Office has responded to queries and provided information to interested governments. In addition, the Office has requested again its regional and country offices to step up their efforts to promote further ratification. Moreover, the Director-General, Deputy Directors-General and other senior officials have discussed this matter during their missions and meetings with constituents.

► Composition and mandate of the tripartite working group

7. As regards the composition of the tripartite working group, at the October–November 2019 337th Session of the Governing Body, there was agreement that the Employer and Worker members would be represented in the working group by their respective group secretariats. As for the governmental representation, some governments favoured an open composition because of the wide interest in the subject matter.⁵ Other governments preferred to define the number of members to enable focused and effective dialogue and proposed, accordingly, a composition of 14 governments from each region.⁶
8. As a result of the consultations held in January and September 2020, in which some groups expressed a preference for a limited and defined membership of the working group while others expressed a preference for the working group to be open to all Member States, to allow for a wide and balanced geographical representation while also bearing in mind the need for focused and effective dialogue, the Governing Body may wish to consider defining the formal composition of Government representatives in the working group as 14 members from each of the four regions, but leaving it open to all governments to attend and participate in the discussions.
9. With respect to the mandate of the tripartite working group, it is recalled that in October–November 2019 the Governing Body decided: “in the light of the call of the International Labour Conference to ‘definitively democratize’ the functioning and composition of the governing bodies of the ILO” that the working group would “serve as a platform for focused dialogue and for developing proposals on the full, equal and

⁴ Questions and answers about the 1986 Instrument of Amendment to the ILO Constitution.

⁵ A Government representative of Uruguay speaking on behalf of GRULAC, GB.337/INS/PV, para. 431.

⁶ A Government representative of Ethiopia speaking on behalf of the Africa group, GB.337/INS/PV, paras 429 and 435.

democratic participation in the ILO's tripartite governance in the spirit of the Centenary Declaration".⁷

10. The relevant provisions of the Centenary Declaration and the related resolution are as follows:

- ILO Centenary Declaration for the Future of Work, preamble:

Desiring to democratize ILO governance by ensuring a fair representation of all regions and establishing the principle of equality among member States,

- ILO Centenary Declaration for the Future of Work, Part I, section E:

E. The growth of the Organization over the past 100 years towards universal membership means that social justice can be achieved in all regions of the world and that the full contribution of the ILO's constituents to this endeavour can be assured only through their full, equal and democratic participation in its tripartite governance.

- Resolution on the ILO Centenary Declaration for the Future of Work, paragraph 3:

3. Calls for the completion, at the earliest opportunity, of the process of ratification of the Instrument of Amendment to the ILO Constitution, 1986, in order to definitively democratize the functioning and composition of the governing bodies of the ILO;

11. During the Governing Body discussion, the Office suggested that the working group's mandate should be as set out in the above texts. While a number of Governing Body members considered that further time was needed to consider this matter, some members found that the working group's mandate had been adequately defined in the resolution on the Centenary Declaration and that the wording of the Centenary Declaration should be preserved to avoid complications.⁸ Others noted that democratization of governance was not limited to the composition of the Governing Body⁹ and that democracy was needed among all the three groups.¹⁰
12. As a result of the consultations held in January and September 2020 the Governing Body may wish to define the mandate of the working group as follows: "The mandate of the working group is to discuss, develop and present proposals to the Governing Body on the full, equal and democratic participation of ILO's constituents in the Organization's tripartite governance by ensuring a fair representation of all regions and establishing the principle of equality among member States."
13. Moreover, during the Governing Body discussion, questions were raised with regard to the duration, functioning and financing of the work of the working group.
14. As regards the duration of the working group, it is recalled that the Governing Body decided in November 2019 that the working group would present its first report to the Governing Body in October–November 2020. Because of the intervening circumstances, it is proposed that the working group would present its first report to

⁷ GB.337/INS/PV, para. 448.

⁸ Workers' group, GB.337/INS/PV, paras 437 and 445.

⁹ A Government representative of Finland speaking on behalf of the EU and its Member States, GB.337/INS/PV, para. 418.

¹⁰ A Government representative of the Islamic Republic of Iran speaking on behalf of ASPAG, GB.337/INS/PV, para. 444.

the Governing Body in March 2021 and that the Governing Body would then determine whether the functioning of the working group should be extended in light of its first report and progress made.

15. It is further proposed that the Chairperson of the tripartite working group be nominated from among the Government members of the working group and, in case of no agreement on a single Chairperson, two Government members be nominated to co-chair the working group.
16. The Director-General or his representative and other ILO officials shall attend the meetings of the working group to provide administrative and substantive support. The working group should be able to hold two meetings before the 341st Session (March 2021) of the Governing Body.
17. The financial cost would depend on the length, frequency and timing of those meetings and would mainly consist of interpretation, translation and printing costs, as the members of the Working Group would bear their own travel and subsistence costs. It results from the consultations that the meetings of the working group should not be organized in the margins of other official meetings. As regards length, the working group could meet for one full day each time, unless otherwise decided. It is expected that the costs of the meetings would be absorbed in current budget allocations.
18. As per usual practice, at its first meeting, the tripartite working group will consider its terms of reference and working methods.

▶ Draft decision

19. The Governing Body decided by correspondence that:

- (a) **the tripartite working group on the full, equal and democratic participation in the ILO's tripartite governance shall be mandated to discuss, develop and present proposals to the Governing Body on the full, equal and democratic participation of ILO's constituents in the Organization's tripartite governance by ensuring a fair representation of all regions and establishing the principle of equality among Member States;**
- (b) **the tripartite working group shall be composed of 14 Government members from each of the four regions and the Employers' and Workers' group secretariats while all interested governments may attend and participate in the discussions;**
- (c) **the Government members of the tripartite working group shall nominate one of them as Chairperson of the working group and, in case of no agreement on a single Chairperson, two Government members shall be nominated to co-chair the working group; and**
- (d) **the tripartite working group shall hold two meetings prior to its 341st Session (March 2021) and submit its first report to that session.**